UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

WOODLANDS CARE CENTER OF CITRUS COUNTY, INC d/b/a WOODLAND TERRACE OF CITRUS COUNTY

and

Case 12-CA-24042

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1199, AFL-CIO,CLC

Chris Zerby, Esq., and Rachael Harvey, Esq., for the Government¹ Mark A. Steinberg, Esq., for the Nursing Home.²

BENCH DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. This is an unlawful interference and wrongful discharge case. The parties gave opening statements presented evidence and gave closing arguments on February 24, 2005. That evening I issued a Bench Decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's (herein Board) Rules and Regulations setting forth findings of fact and conclusions of law.

For the reasons stated by me on the record at the close of trial, including credibility determinations, I found Woodlands Care Center of Citrus County, Inc. d/b/a Woodland Terrace of Citrus County (herein Nursing Home) violated Section 8(a)(1) of the National Labor Relations Act, as amended, (herein Act) by: LPN Charge Nurse Laurel Vance on August 18, 2004, directing employees not to sign union authorization cards; RN Unit Manager Deborah Monday on August 24, 2004, telling employees they would not be able to talk to Nursing Home managers about their terms and conditions of employment if they chose

¹ I shall refer to Counsel for General Counsel as Government Counsel or the Government.

² I shall refer to the Respondent as the Nursing Home.

the Service Employees International Union, Local 1199, AFL-CIO, CLC (herein Union) as their collective bargaining representative; and, Director of Nursing Cathy Egan on August 24, 2004, threatening to discharge employees if they solicited for the Union in the Nursing Home.³ I found the Nursing Home violated Section 8(a)(3) and (1) of the Act when on August 24, 2004, it discharged its employee Candice Huse because she joined, supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities. *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

I certify the accuracy of the portion of the transcript, as corrected,⁴ pages 172 to 196 containing my Bench Decision and I attach a copy of that portion of the transcript, as corrected, as Appendix A.

Conclusions of Law

Based on the record, I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that it violated the Act in the particulars and for the reasons stated at trial and summarized above and that its violations have affected and, unless permanently enjoined, will continue to affect commerce within the meaning of Section 2(2) and (6) of the Act.

Remedy

Having found the Nursing Home has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Nursing Home having discriminatorily discharged its employee Candice Huse I shall recommend she, within 14 days from the date of the Board's Order, be offered full reinstatement to her former job, or if her job no longer exists to a substantially equivalent position, without prejudice to her seniority, or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings or other benefits suffered as a result of the discrimination against her with interest. I shall recommend the Nursing Home, within 14 days of the Board's Order, remove from its files any reference to the discharge of Candice Huse and within 3 days thereafter notify her in writing that this has been done and that her discharge will not be used against her in any manner. Back pay shall be computed in accordance with F.W. Woolworth Co., 90 NLRB 289 (1950), and interest shall be computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987). I shall also recommend that the Nursing Home be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" a copy of which is attached hereto as "Appendix B" for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and the Nursing Home's obligation to remedy its unfair labor practices.

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³ I dismissed for lack of evidence an allegation the Nursing Home on August 24, 2004, by persons unknown to the government, removed union authorization cards from an employee's locker at the Nursing Home.

⁴ I have corrected the transcript pages containing my Bench Decision and the corrections are as reflected in attachment Appendix C.

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On these findings of fact and conclusions of law and on the entire record, I issue the following:⁵

ORDER

The Nursing Home, Woodlands Care Center of Citrus County, Inc. d/b/a Woodland Terrace of Citrus County, its officers, agents, successors and assigns shall:

1. Cease and desist from:

- (a) Discharging employees for supporting and assisting the Union and/or engaging in concerted activities in order to discourage employees from engaging in these or other concerted protected activities.
- (b) Directing employees not to sign union authorization cards, telling employees they would not be able to talk to managers about their terms and conditions of employment if they chose the Union as their collective-bargaining representative, and, threatening employees with discharge if they solicit for the Union in the building.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days of the date of the Board's Order offer Candice Huse reinstatement to her former job or if her former job no longer exists to a substantially equivalent job without prejudice to her seniority or other rights or privileges previously enjoyed, and make her whole for any lost wages and benefits she suffered as a result of her discharge.
- (b) Within 14 days of the date of the Board's Order remove from Candice Huse's files any reference to her unlawful discharge and within 3 days thereafter notify her in writing this has been done and that her discharge will not be used against her in any manner.
- (c) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, Social Security payment records, time cards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of any back pay due under the terms of the Board's Order.
- (d) Within 14 days after service by the Regional Director of Region 12 of the National Labor Relations Board, post at its Hernando, Florida, facility copies of the

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⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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attached "Notice to Employees" marked "Appendix B." Copies of the "Notice to Employees," on forms provided by the Regional Director for Region 12 after being signed by the Nursing Home's authorized representative shall be posted by the Nursing Home and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings the Nursing Home has gone out of business or closed the facility involved in these proceedings, the Nursing Home shall duplicate and mail, at its own expense, a copy of the "Notice to Employees", to all employees employed by the Nursing Home on or at any time since August 18, 2004.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 12 of the National Labor Relations Board sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Nursing Home has taken to comply.

It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated at Washington, D.C.

William N. Cates Associate Chief Judge

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⁶ If this order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read: POSTED PURSUANT TO A JUDGEMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

EVENING SESSION

This is my decision in Woodland Care Center of Citrus County, Inc., d/b/a Woodland Terrace of Citrus County, herein the nursing home, Case 12-CA-24042.

The charge in this case was filed by Service Employees International Union, Local 1199, AFL-CIO, CLC, herein the union, on August 30, 2004 and amended on October 25, 2004.

The National Labor Relations Board's General Counsel, herein government, in a complaint issued on December 30, 2004 alleges the nursing home at its facility in Hernando, Florida

on or about August 18, 2004 directed employees not to sign union authorization cards, and on or about August 24, 2004 told its employees they would not be able to talk to nursing home managers about their terms and conditions of employment if they chose the union as their collective bargaining representative and threatened to discharge employees if they solicited for the union in the nursing home and removed union authorization cards from an employee's locker at the nursing home.

The conduct is alleged to violate section 8(a)(1) of the National Labor Relations Act as amended herein Act. It is also alleged that the nursing home on or about August 24, 2004 discharged its employee Candice Huse because she joined, supported and assisted the union and engaged in concerted activities and to discourage employees form engaging in these activities in violation of Section 8(a)(1) and (3) of the Act. The nursing home by a timely filed answer to the complaint denied having violated the Act in any manner set forth in the complaint.

On the entire record including my observation of the witnesses and after considering opening and closing statements by government and nursing home counsel, I make the following findings of fact and conclusions of law. The nursing home is a Florida corporation and it operates a nursing home in Hernando, Florida. Annually the nursing home

derives gross revenues in excess of \$100,000 from the performance of its nursing services at its facility and it purchases and receives from outside the state of Florida goods at its Hernando location valued in excess of \$50,000.

The nursing home admits, the evidence establishes and I find it is an employer within the meaning of Section 2(2), (6), (7) of the Act.

The nursing home admits, the evidence establishes and I find the union is a labor organization within the meaning of Section 2(5) of the Act.

Deborah Monday is registered nurse unit manager. Scott Smith is administrator and Cathy Egan is director of nursing for the nursing home. And, they are admittedly supervisors and agents of the nursing home within the meaning of Section 2(11) and 2(13) of the act.

This case as in most cases requires credibility resolutions and I say this simply because certain of the nursing home witnesses made general denials as to having engaged in the acts specifically alleged in the complaint. That is, nursing home counsel took them through the specific allegations in the complaint having them state that they had not engaged in such conduct nor were they aware of anyone having done so. Let me state that I have carefully observed the witnesses as they testified and I have utilized such in arriving at the facts herein. I considered each witness'

testimony in relation to other witnesses' testimony and in light of the exhibits received in evidence herein.

If there is any evidence that might seem to contradict any credited facts I set forth and rely on, I have not ignored such evidence but rather have discredited or rejected it as not reliable or trustworthy. I have considered the entire record in arriving at the facts herein.

I shall address the allegations of the complaint in the order that I deem provides the easiest explanation for any rulings, factual findings, or conclusions that I make. I shall first address the issue of whether Laurel Vance the LPN or licensed practical nurse, charge nurse, is a supervisor within the meaning of Section 2(11) of the Act. According to Director Of Nursing Egan, licensed practical nurses, of which Laurel Vance is one, could send employees home for rules violations without prior approval of anyone. Licensed practical nurses could give verbal and written warnings to certified nursing assistants and other employees. According to Director of Nursing Egan certified nursing assistants report to licensed practical nurses and take their assignments from the licensed practical nurses. Director of Nursing Egan testified she seeks input from the licensed practical nurses in evaluations of employees. Specifically Director of Nursing Egan could recall one or two written disciplinary actions that Licensed Practical Nurse Vance had

given employees.

Licensed Practical Nurse Vance's written job description includes such items as, "The primary purpose of your job description is to provide direct nursing care to the residents, and to supervise the day-to-day nursing assignments performed by nursing assistants." The job description goes further to state, "Such supervision must be in accordance with current federal, state, and local standards and guidelines and regulations that govern the nursing home." The duties and responsibilities of a licensed practical nurses and of Licensed Practical Nurse Vance in particular states among other things that she is to "ensure that all nursing personnel assigned to her comply with the written policies and procedures established by the nursing home." Licensed Practical Nurse Vance is directed to meet with her assigned nursing staff as well as support staff in planning shift services, programs, and activities. She is directed to make written and oral reports and recommendations concerning the activities of her shift.

Licensed Practical Nurse Vance is directed to periodically review the resident's written discharge plan and to participate in the updating of the written discharge plan. Licensed Practical Nurse Vance is directed to assist in planning the nursing services portion of the resident's discharge plan as necessary. Licensed Practical Nurse Vance

is directed to order prescription medication, supplies and equipment as is necessary. She is directed to participate in employee performance evaluations, determine her shift's staffing requirements and to make recommendations to the nurse supervisor concerning employee dismissals. She is directed to review and evaluate her department's work force and make recommendations accordingly. She is to provide leadership to the nursing personnel assigned to her shift. She is to review complaints and grievances made or filed by her assigned personnel. Among other things, she is to ensure that departmental disciplinary action is administered in a fair manner without regard to race, color, creed, national origin, sex, age, religion, handicap, or marital status. She is to participate in developing, planning, conducting, and scheduling in-service training classes that provide instructions on how to do the job for the employees on her shift. She is to implement and maintain effective orientation programs for the new employees on her

shift and the policies and procedures that are applicable on her shift. She is to monitor and assign personnel to ensure that they are following established safety procedures.

In her job description, certain specific requirements are set forth such as: She must possess the ability to make independent decisions. She must possess leadership and supervisory ability and the willingness to

work harmoniously with and supervise the personnel assigned to her shift.

The evidence indicates that Licensed Practical Nurse Vance fills in as the East Side Unit Manager on her shift from time to time. One of the evaluations for Licensed Practical Nurse Vance that was received into evidence indicates, "She manages her time effectively and demonstrates excellent supervisory skills." Director of Nursing Egan testified Vance gets the certified nursing assistants to do what she wants to be done from the nursing home's point of view. Director of Nursing Egan testified verbal warnings, which Licensed Practical Nurse Vance gave are part of the formal disciplinary process at the nursing home. Egan also stated that licensed practical nurses can and do give written warnings to employees but that usually they dealt in verbal warnings, which in most instances took care to the matter.

Licensed Practical Nurse Vance testified she is a licensed practical charge nurse who has disciplined at least three employees for egregious acts at the nursing home.

Vance testified she gave verbal and written warnings without having to obtain approval before doing so.

Vance directs the work of the certified nursing assistants on her shift, which will involve at least five to six employees. Vance determines and schedules their lunch, morning, and afternoon breaks, and disciplines employees.

Section 2(3) of the Act defines an employee and specifically excludes from that term any individual employed as a supervisor. Section 2(11) of the Act sets forth the statutory description for a supervisor, which is as follows: The term supervisor means any individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust grievances or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

The statutory definition lists the functions of a supervisor in the disjunctive. So, if an individual meets any one of those specifically enumerated powers, then, they will be found to be a supervisor.

I specifically find that Vance is a supervisor within the meaning of Section 2(11) of the Act in that among other things the record clearly establishes that she has the responsibility to direct and assign the work of the certified nursing assistants, and that such direction and assignment involved the exercise of independent judgment. She also has the authority, the power and has exercised the authority and power to discipline employees.

With just those categories of findings, I am fully

convinced that she is a supervisor within the meaning of the Act. To the extent that any one could contend that she is not a supervisor but merely is in a position to exercise greater technical expertise and experience as a licensed practical nurse as opposed to a certified nursing assistant, the Supreme Court in Kentucky River, 532 U.S. 717, specifically rejected that rationale of the Board. And, the court observed that what supervisory judgment worth exercising does not rest on professional or technical skill or experience. Simply stated I find that the scope of the discretion exercised by the licensed practical nurses and with

specific particularity Licensed Practical Nurse Vance, to direct and assign work to the certified nursing assistants involves

independent judgment. And I conclude that the licensed practical nurses responsibly direct and assign employees in the interests of the nursing home. With that, I find that she is a supervisor within the meaning of the Act.

Candice Huse commenced working for the nursing home in December of 2002 and her employment ended on August 24, 2004 when she was discharged by the nursing home. Huse was employed as a certified nursing assistant. Her duties included among other things: getting the patients up at the nursing home, helping them with their shower, getting them dressed, moving them around in their rooms, and generally taking care of the welfare and well-being of the patients at

the nursing home. In other words, she met the daily cares and needs of the residents at the nursing home.

At the time of her discharge, Huse was working the 7:00 a.m. to 3:00 p.m. shift. The employees at the nursing home are allowed a 30-minute lunch break and, work permitting, a 15-minute morning and afternoon break at which time the employees may and do go to the break room to eat, drink or proceed to a screened in porch where they smoke.

According to Huse, the employees are provided a small locker at the nursing home to use as they wish and they may even provide their own lock to secure the locker while using that facility provided by the Nursing Home. Huse testified the lockers are not assigned to specific employees and that any locker not otherwise in use can be utilized by the certified nursing assistants. Huse testified on some days when she utilized the small locker she went to the locker room only at the beginning and ending of her shift. While on other days she testified she might return to the locker room to her locker several times during the workday.

Certified Nursing Assistant Huse testified that on August 16, 2004 union organizer Ted Roberts visited with her at her home. According to Certified Nursing Assistant Huse union organizer Roberts told her about being union and gave her some pamphlets one of which was entitled, "The Law" which spelled out that employees have a right to join a union. The

pamphlet was blue in color. The pamphlet described employee rights as outlined in the National Labor Relations Act.

Union organizer Roberts also provided Huse a second pamphlet entitled "Facts About Your Dues & the Union." Huse also signed a union membership card on that date and union organizer Roberts gave her several blank cards that she could utilize to seek to have other employees of the nursing home sign up with the union. Huse testified she took the pamphlets and the blank union cards to work with her in an orange folder. Huse stated she discussed the union with her co-workers on at least ten occasions. Specifically Huse stated she spoke with Barbara Bailey, Angie Strickland, along with employees she simply knew as Cindy and Jason in the screened in porch of the employees' break room. Huse testified she and the other employees were on break at the time. Huse explained that healthcare workers could organize and explained what the union could do and could not do for the employees. Huse testified she showed the employees the blue pamphlet entitled "The Law," and also, the pamphlet dealing with the union dues and the like.

Huse testified that Barbara Bailey told her to go back to her automobile and get the union membership cards and that she, Bailey, would sign one right then. Huse testified that Angie Strickland told her that she, Strickland, was moving from the nursing home to some place else and there would be no need for her to sign a union membership card.

According to Huse Licensed Practical Nurse Vance asked Certified Nursing Assistant Bailey what she was signing. According to Huse, Vance told Bailey in the presence of the others that she shouldn't sign anything until she found out how Director of Nursing Egan and Nursing Home Administrator Smith felt about it. Huse stated that Vance knew what the union membership card was because she was told what it was. According to Huse Vance told her she would not sign it that it could all come down on her and she was to find out how Administrator Smith and Director of Nursing Egan felt about it.

Huse testified Licensed Practical Nurse Vance asked her if she had permission from Director of Nursing Egan and/or Administrator Smith to do what she was doing.

Huse testified that the screened in porch was not a working area and that patients were not supposed to be in that area. Huse testified she left the area where she had the meeting and over the next couple of days discussed the union with various employees of the nursing home. Huse testified she gave five or six union membership cards to a laundry department employee named Tony, and three to a housekeeping employee.

Certified Nursing Assistant Huse testified that on August 24, 2004, she spoke with East Wing Registered Nurse

Unit Manager Deborah Monday about the fact that it was hard to get all the work done that needed to be accomplished. Huse said they also discussed union dues, which Huse stated were \$30 to \$40 per month but that she thought they were well worth it.

Huse testified, without contradiction, that Registered Nurse Unit Manager Monday told her if she came under the union Huse could not come to her, Monday, like she could at the present.

Certified Nursing Assistant Huse testified she was summoned to Director of Nursing Egan's office on August 24, 2004, where Egan along with Elaine Partee were present. Director of Nursing Egan told Huse she had been soliciting and that she was being discharged for that reason. Huse testified she left the office upset and angry and told three fellow employees she had been discharged for soliciting. Huse testified she stopped by her locker, the lock had been removed from her locker, and two signed union cards she had in the locker were missing. Huse testified she had never been disciplined at any time for insubordination, tardiness, or using profanity.

Two-year employee Allison Albert testified she was present for a portion of the August 18 and/or 19, 2004 meeting on the screened porch at which Certified Nursing Assistant Huse spoke about the union, saying it was a good

thing. Albert indicated Licensed Practical Nurse Vance wanted to know if

Administrator Smith knew about Huse's activities. Albert testified that a couple of days

later Director of Nursing Egan asked her if Huse had union literature at the meeting.

Nursing Home Administrator Smith testified that Certified Nursing Assistant Craig Swartz told him in August that the union was on the scene. Smith told nursing home employees at an in-service meeting in August that union representatives were in the area and visiting employees' homes. Smith told the employees that if they had any questions they could come to him, that he was aware union representatives were talking to the employees. Administrator Smith testified he was told by Director of Nursing Egan, about Huse's soliciting in the break room at the nursing home. Smith testified he and Director of Nursing Egan discussed the fact that Licensed Practical Nurse Vance had said Huse's activities made employees feel uncomfortable and he was afraid her conduct would have a negative effect on employees and hurt morale at the nursing home. Smith told Egan she could discipline Huse in any appropriate manner to include discharge if she felt so inclined.

Smith testified he and Egan discussed Huse's past employment history, however, after that Smith said he had no further role in the discharge of Huse.

Director of Nursing Egan testified she learned on August 19, 2004, from Licensed Practical Nurse Vance that Huse had been soliciting the employees in the break room at the nursing home. Egan also testified that certified nursing assistants spoke to her about it. Egan specifically mentioned employee Allison Albert. Egan testified she was told Huse was trying to get employees to sign union related materials. Egan testified Licensed Practical Nurse Vance told her Huse had been soliciting in the break room and she had asked Huse if she had permission from Administrator Smith or Director of Nursing Egan.

Director of Nursing Egan asked Vance to prepare a statement regarding the solicitation. Vance's statement, which was available to Egan before Huse's discharge was received in evidence. Vance's statement states, "In reference to Candice Huse: While out in the employee lounge on break Candice had a folder with packets of information pertaining to a union that she was supporting and trying to get into this facility. She had a signature list and was trying to get other employees to sign it and give their information. The other employees were looking uncomfortable and I asked Candice if she had approval to pass out information. She said, No. I advised the employees not to sign anything."

Director of Nursing Egan testified she bypassed the

nursing home's progressive disciplinary procedure when she terminated Huse. Egan testified Huse overall was not a good certified nursing assistant.

Licensed Practical Nurse Vance testified that she observed Certified Nursing Assistant Huse with a folder on a table in the break room on August 19, 2004 and that Huse was handing out copies of the materials to the employees. Vance testified she asked Huse if she had permission to hand out the materials and Vance testified she told the employees not to sign anything they were not comfortable with. Licensed Practical Nurse Vance testified that after Huse left the break area, one of the certified nursing assistants showed her one of the union cards Huse had passed out. Vance testified that when Huse was talking to the employees in the break room it appeared the employees were uncomfortable. Vance testified that Huse had used profanity in front of patients and staff.

Huse's employee termination notification dated 8/24/2004 and signed by Director of Nursing Egan stated, "on 8/24/04 several employees expressed to the writer that on 8/19/04 Candice was in the employee break room soliciting information to staff, attempting to obtain signatures, and passing out information. On 8/24 employee was terminated due to violation of employee handbook rules and regulations reference soliciting within the building."

On another nursing home document the reason for Huse's discharge was listed as "terminated due to soliciting within the building" and such was signed by Director of Nursing Egan and Administrator Smith. On the state of Florida Determination Notice of Employment Compensation Claim the reason provided by the nursing home for Huse's discharge was "terminated due to soliciting with in the building."

I shall now address the allegations of coercion and interference that are alleged in the complaint specifically commencing with the allegation that on or about August 18, 2004, the nursing home by Laurel Vance whom I have found to be a supervisor, at its Hernando facility directed employees not to sign union authorization cards. The credited evidence indicates that Vance told an employee Barbara Bailey in the presence of others that she shouldn't sign anything until she found out how the Director of Nursing Egan and Administrator Smith felt about it. The evidence indicates that Vance also stated that Huse or others if they were her would not sign the documents because it could all come down on them and they needed to find out how Administrator Smith and Director of Nursing Egan felt about it.

Is that conduct coercive within the meaning of Section 8(a)(1) of the Act. I find that it is because Supervisor Vance is simply telling the employees not to sign a union card until such time as they find out how the management at

the highest level of the nursing home feels about them doing so, and also indicating that it could bring repercussions.

The next specifically alleged act is that on or about August 24, 2004, admitted supervisor Deborah Monday at the nursing home facility told employees that they would not be able to talk to Respondent's managers about their terms and conditions of employment if they chose the union as their collective bargaining representative. The evidence is clear and uncontradicted on that particular point. The credited testimony of Huse is that Registered Nurse Unit Manager Monday told her that if she came under the union that she could not come to her, Monday, meaning the last name Monday not the day of the week, like she could at the present. To threaten such a change in working conditions is coercive and violates Section 8(a)(1) of the Act and I so find.

The next allegation of coercion and interference is that Director of Nursing Egan is alleged on August 24, 2004, to have at the nursing home threatened to discharge employees if they solicited for the union at Respondent's facility. Here the credited evidence would indicate without dispute that Huse was told she was being discharged because she solicited for the union. Actually, she was told she was being discharged for soliciting. The soliciting I find was for the union. To make sure that it is understood what Director of Nursing Egan said.

Here it is not as much a threat to discharge as it is the actual carrying out of the discharge. But I'm persuaded that inextricably intertwined with the discharge notification verbally to Huse that Egan included a threat that if you solicit you are going to be discharged. So, I find an interference violation with respect to that.

The next allegation of interference and coercion allege is
that on or about August 24, 2004, person or persons unknown to the government
removed union authorization cards from an employee's locker at the nursing home
facility. There is absolutely no evidence in this record that would show that anyone
from the nursing home management was responsible for the removal of the lock,
assuming it was removed, and for the disappearance of the two cards. The government
would ask that I infer that the nursing home is the one that
took them. Well, I could also infer that perhaps the employees who were
"uncomfortable" with being talked to about the union could have taken the documents. I
could speculate that perhaps one or both of the individuals signing the signature cards
wanted their card back without Huse knowing who took it back. It is no more farfetched to come to that conclusion than it is to come to the conclusion that the nursing
home is somehow responsible for this disappearance.

I find that there is absolutely and unequivocally no evidence to support the General Counsel's allegation with

respect to the removal of union authorization cards and I shall dismiss that part of the complaint.

Did the August 24, 2004, discharge of Employee Huse violate the Act? In cases turning on employer motivation as is the case herein, causation is determined pursuant to Wright Line 251 NLRB 1083, in 4662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially the government must prove by a preponderance of the evidence the protected conduct was a "motivating factor" in the employer's decision. To establish this, the government must adduce evidence of protected activity, the nursing home's knowledge of the protected activity, animus on the part of the nursing home toward the protected activity and a link or nexus between the protected activity and the adverse employment action.

I find the government established a prima facie case herein. First, Huse had union activity demonstrated by the fact that she signed a union membership card, she actively asked and sought other employees to sign union membership cards, she spoke on at least ten occasions with fellow employees about the union.

Did the nursing home have knowledge of her union activities? I find the nursing home did. The nursing home acknowledged such. Administrator Smith testified he had general knowledge of union activity in the area and even spoke with employees at an inservice training meeting

regarding the fact that he knew employees were or at least had the opportunity to meet with union organizers. Licensed Practical Nurse Vance, found to be a supervisor herein, knew of Huse's union activity and specifically learned of it at the meeting Huse had with the employees on the screened back porch on August 18 or 19, 2004. Specifically, for example, Employee Allison Albert testified that Huse spoke about the union at the meeting saying it was a good thing and Albert also testified that Vance wanted to know if Administrator Smith knew about Huse's activities. Albert further testified that a couple of days later Director of Nursing Egan asked her if Huse had a union list at the meeting. Licensed Practical Nurse Vance herself testified that after Huse left the meeting that took place on August 18th in the screened in porch area, that one of the certified nursing assistants showed her one of the union cards Huse had passed out. Director of Nursing Egan testified that certain of the certified nursing assistants spoke to her about what Huse had done at the meeting and Egan testified she was told that Huse was trying to get employees to sign union related materials. So, the nursing home had knowledge of the protected activity in general and specifically with respect to Huse.

Was there demonstrated anti-union animus on the part of the Nursing Home. And the answer to that is found in the various

findings of interference that I have earlier made. Such as,

Licensed Practical Nurse Vance telling employees not to sign union authorization cards, Supervisor Monday telling Huse that she could no longer come to her as she had in the past if the union came in. So, there is animus to demonstrate hostility toward the union activity.

I find that there is a link between the protected activity and the adverse employment action and that one point in this case is absolutely clear. She was discharged specifically for soliciting.

Now, having found that the government established a prima facie case, the burden then shifts to the nursing home to demonstrate that the same action would have taken place even in the absence of the employee's protected activity. Stated differently, did the nursing home prove it would have discharged Huse notwithstanding any protected or concerted activity on her part?

I find that the nursing home failed to meet its burden and I do so for a number of reasons. First and foremost, it is undisputed that the nursing home discharged Huse for soliciting, solicitation which I find she was privileged to participate in, that had been done during non-working time in a break area, on break time. That is Huse was not only on break time, but those with whom she was discussing the union were likewise on break time.

I find further evidence that any justification the

Nursing Home advanced was post hoc rationalization or after the

fact pretextual reasons. I note the nursing home elected to bypass its progressive disciplinary system and go straight to discharge with Huse. The nursing home would contend that Huse was not a good employee, that she had tardiness problems, that she had used profanity in front of patients and staff and that she was insubordinate. Nowhere in any of its documents, the notification of termination, the response to unemployment compensation, or any reason for discharge was there ever any mention of any of these other reasons advanced for the discharge of Huse. Furthermore, Huse testified without reliable contrary testimony that she had never been disciplined for insubordination, tardiness, or profanity.

I'm fully persuaded that management witness' testimony to the effect that all these other items played a part in the discharge of Huse is perhaps nothing more than wishful thinking after the fact because I am fully persuaded that had there been these other reasons that they would have been documented in the records pertaining to the discharge of Huse.

I find that Huse's discharge violated Section 8(a)(3) and (1) of the Act. I shall direct that Huse be reinstated and made whole. That any documents pertaining to her unlawful discharge be expunged from her records and that she

be so notified and that the Nursing Home post an appropriate notice.

In due time the court reporter will serve on me the transcript of today's proceedings. When I receive that transcript I will, if necessary, make corrections thereon. I will indicate specifically what my corrections, if any, are.

And I will certify those pages of the transcript that constitute my decision I may expand thereon.

I will attempt to certify the decision and serve it on the parties as soon after I receive the transcript, as is possible. For any exceptions taken to my decision, I urge the parties to follow the Board's rules and regulations with respect to the taking of exceptions. I used to mention when I thought the time period ran and the Board seemed to indicate in a decision that they would prefer I not do that. So, follow the Board's rules and regulations with respect to taking exceptions.

Let me state that, again, the case was well presented by all sides and that it has been a pleasure to be in Tampa, Florida. Madam Court Reporter, I thank you for taking down the case. With that, the record is closed.

(Whereupon, at 7:25 p.m., the hearing in the above-entitled matter was closed.)

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 12, in the matter of **WOODLANDS CARE CENTER OF CITRUS COUNTY, INC. d/b/a WOODLAND TERRACE OF CITRUS COUNTY,**Case No. 12-CA-24042, held at Tampa, Florida, on February 24, 2005, were held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the

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hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

Letha J. Wheeler Official Reporter/Transcriber

APPENDIX B

NOTICE TO EMPLOYEES

Posted by the Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL NOT discharge employees because they support and assisted Service Employees International Union, Local 1199, AFL-CIO CLC, or any other labor organization, and/or because they engage in concerted protected activities.

WE WILL NOT direct our employees not to sign union authorization cards.

WE WILL NOT tell our employees they will not be able to talk to our managers about their terms and conditions of employment if they chose the Union as their collective-bargaining representative.

WE WILL NOT threaten our employees with discharge if they solicit for the Union in our facility.

WE WILL, within 14 days of the Board's Order, offer Candice Huse full reinstatement to her former job or if her former job no longer exists to a substantially equivalent job without prejudice to her seniority or other rights or privileges previously enjoyed; and, **WE WILL** make her whole for any loss of earnings and other benefits resulting from her discharge less any net interim earnings, plus interest.

WE WILL, within 14 days of the Board's Order, remove form our files any reference to the discharge of Candice Huse, and **WE WILL**, within 3 days there after, notify her in writing that this has been done and that her discharge will not be used against her in any manner.

WOODLANDS CARE CENTER OF CITRUS COUNTY, INC. d/b/a WOODLAND TERRACE OF CITRU COUNTY (Employer)

Dated	Bv	
	- ,	

(Representative (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

201 East Kennedy Boulevard, Suite 530 Tampa, FL 33602-5824 (813) 228-2641, Hours 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGION'S

COMPLIANCE OFFICER, (813) 228-2662

APPENDIX C JD(ATL)—13—05

Page(s)	Line(s)	Delete	Insert
172	2-16	Entire Lines	
172	17	Woodland's	Woodland
173	11	(i)	Act
173	15	encourage	discourage
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175	4	accredited	credited
176	12	"Ensure	"ensure
177	6	worked	work
177	11	the	
177	18	that orientates	for
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177	22	Then in	In
178	5	on	for
180	11	in	with
180	13		"work to" after "assign
181	5		"," after "and"
			"," after "permitting"
181	12	Company	Nursing Home
182	17	1	"what" after "explained"
183	4		"," after "Huse"
183	10	if	
183	18	had	
184	6		"," after "testified"
			"," after "contradiction"
187	25		"," after "building."
188	5	employment	Employment
188	8	allegation	allegations
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194	2	because	. I note
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195	6	were.	are.
195	8	as my decision as my decision and	
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